IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 9817 of 2006(R)

PETITIONER:

SIDHARDHANM ASARIVELI,
GURUPURAM, AVALOOKUNNU P.O., ALAPPUZHA.

ADDITIONAL PETITIONER:

2. THILAK RAJ, S/O.KRISHNANKUTTY,
SRAMPIKKAL HOUSE,
PATHIRAPPILLY VILLAGE, CHETTIKKAD,
ALAPPUZHA DIST.
(ADDL.P2 IMPLEADED AS PER ORDER DTD.
18.8.06 IN I.A.NO.11364/06)

BY ADV. SRI.V.GIRI

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. ASST.EXCISE COMMISSIONER, ALAPPUZHA.

ADDITIONAL 3RD RESPONDENT:

3. SHRI.K.V.UGRAVRATHAN,
S/O.VELAYUDHAN,LAKSHMY,
CHERTHALA CNAAL ROAD,
ARALOOKUNNU PO., ALAPPUZHA.
(R3 IMPLEADED AS PER ORDER IN I.A.NO.11364/06.
ON 18.8.06)

G.P. SHRI.BASANT BALAJI.
BY ADV. DR.K.P.SATHEESAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No.9817/06.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE LICENCE ISSUED IN FAVOUR OF KUTTAPPAN.

P2. COPY OF THE PROCEEDINGS OF EXCISE COMMISSIONER DTD.1.11.05.

P3. COPY OF THE NOTICE DTD.18.2.06 BY R2.

P4. COPY OF THE CONSENT BY THE LANDLADY DTD.20.2.06.

P5. COPY OF THE SALE DEED DTD.27.9.03.

P6. COPY OF THE PLAINT IN O.S.NO.162/96.

P7. COPY OF THE JUDGMENT IN O.S.NO.162/96 OF ADDL.SUB COURT, ALAPPUZHA.

P8. COPY OF THE JUDGMENT IN W.P.C.NO.31121/05.

P9. COPY OF THE COMMUNICATION DTD.6.3.06 BY R2.

P10. COPY OF THE REPRESENTATION DTD.9.3.06.

P11. COPY OF THE REPRESENTATION DTD.9.3.06.

P12. COPY OF THE REJECTION ORDER DTD.20.3.06.

Sdk+

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P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.9817 of 2006

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Dated this the 20th day of August, 2007

J U D G M E N T

The petitioners are licensees of a toddy shop. The first petitioner was the former licensee and the additional 2nd petitioner is the present licensee. They approached this court challenging the order passed by the Assistant Excise Commissioner, Alappuzha, refusing to renew the licence for toddy shop N.46/05-06 for the period commencing from 1.4.2006. On 5.12.2006 this court passed an order directing the Government Pleader to file a report as to why in spite of the judgment of the civil court, holding that the toddy shop in question is within the prohibited distance from two churches, licence was issued in violation of the Regulations. The 2nd respondent has filed an additional affidavit, which reads thus:

> "A Counter Affidavit has already been filed by this respondent on 18-10-06. When the case came up for hearing again on 5-12-06, this Hon'ble Court directed the respondent to clarify certain aspects as follows:

(1) Inspite of the judgment in OS No.162/96 why the licence was renewed during the period from 1996 to 2005.

(2) How was the licence renewed in an objectionable site as mentioned in the judgment of the Civil Court.

(3) Whether the toddy shop is in the same building No.3/447.

2. It is humbly submitted that the toddy shop was allowed to function in the building No.3/451(A) from 1997 to 2004. Since the building No. was changed from 3/447 to 3/451(A), the 2nd respondent was under a bonafide belief that the building was not the same,hit by the injunction order in OS No.162/96. Actually, both buildings are different. Since the injunction order was specific about the building, the 2nd respondent omitted to verify the boundaries of the shop. Due to an inadvertent mistake on the part of the 2nd respondent, this happened, and the shop was allowed to function in the building No.3/451(A).

3. Only in 2005 when the additional 3rd respondent filed W.P (C).No.31121/05 challenging the continuation of toddy shop in building No.3/451 A1, the 2nd respondent became aware of the injunction order with regard to the site also. The 2nd respondent could verify the objectionable nature of the site only in 2005. During 2005-06 one Kuttappan was the privilege holder and licence was granted to him due to the above mistake. Since Kuttappan was involved in an abkari offence, his licence was cancelled in November, 2005. The 1st petitioner thereafter was granted privilege on 17-2-06 with a rental of Rs.500/-, exempting tree tax, one month wages of the employees and three months welfare fund contribution. Since the 1st petitioner was not granted licence due to the objectionable nature of the site, his privilege expired in March 2006.

4. The 2nd petitioner participated in the sale and he was granted the privilege for 2006-07. But he also applied for licence with respect to the same site (objectionable site) and licence was not granted to him. It is humbly submitted that if the petitioners had applied for an un-objectionable site within the notified limits of the toddy shop No.47 in Alappuzha Range, the 2nd respondent could have granted licence to them.

5. The building No.3/447 of the Alappuzha Municipality is presently owned by one R.K.Maniyappan. The building No.3/451(A) formerly belonged to one Vidhyanandan and subsequently transferred to Smt.K.K.Raji. Building No.3/451(A) is different from building

No.3/447. But the boundaries are one and same. The Sy.No. also is same ie. Sy.No.300/3/2. In 2005, the southern boundary is changed as the property of Ugravrathan, additional 3rd respondent.

6. Since the permanent prohibitory injunction is with respect to the site, this respondent is unable to grant licence to a toddy shop in the objectionable site which is the present site. The privilege holder can apply for a licence in any other un-objectionable site within the notified limits of the toddy shop. It is humbly submitted that the mistake committed by the respondent is not deliberate and un-intentional. The 2nd respondent renders un-conditional apology in causing the un-intentional and inadvertent omission and mistake, happened to be committed."

2. In view of this affidavit, nothing further needs to be done in this writ petition except to direct respondents 1 and 2 to see that no licence is issued for functioning of toddy shop at the location complained of in this writ petition, in future. Ordered accordingly.

The writ petition is disposed of as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE